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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,197	07/01/2000	John B. Ferber	08011.3006-00000	6838
22852 7590 07/28/2008 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER LAFORGIA, CHRISTIAN A				
ART UNIT		PAPER NUMBER		
2139				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/610,197

## Applicant(s)

FERBER ET AL.

## Examiner

Christian LaForgia

## Art Unit

2139

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7-20 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5 and 7-20 is/are allowed.
- 6) ☒ Claim(s) 31-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 May 2008 has been entered.
2. Claims 2-5, 7-20 and 31-38 have been presented for examination.
3. Claims 1, 6, and 21-30 have been cancelled as per Applicant's request.
4. Claims 2-5 and 7-20 have been indicated as being allowable.

***Response to Arguments***

5. Applicant's arguments with respect to claims 31-38 have been considered but are moot in view of the new grounds of rejection set forth below.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,907,566 B1 to McElfresh et al., hereinafter McElfresh, in view of U.S. Patent Application Publication No. 2002/0072965 A1 to Merriman et al., hereinafter Merriman.

8. As per claim 31, McElfresh teaches a computer-implemented method for optimizing placement of Internet advertisements, comprising:

establishing a customer profile for a customer, the customer profile including category attributes related to a category of advertisements of interest to the customer and product attributes related to a product of interest to the customer (column 2, lines 56-61, column 8, lines 28-67, i.e. gathering information regarding a user and using this information to optimize an ad shown to said user);

receiving an Internet advertisement (Figures 1 [blocks 16, 18, 20], 2 [blocks 44, 46, 48, 50], column 5, lines 27-37, column 5, lines 56-65);

computing a click probability estimate representing a likelihood that the customer will select the Internet advertisement according to the category attributes and the product attributes (column 5, line 56 to column 6, line 14, column 11, lines 10-33, i.e. click through percentage);

presenting the Internet advertisement to the customer based on the click probability estimate (Figure 2 [blocks 44, 46, 48, 50], column 5, lines 56-65);

receiving a response to the Internet advertisement from the customer (column 9, lines 15-28, i.e. collecting performance statistics of the advertisements);

adjusting the click probability estimate for the Internet advertisement based on the received response to the Internet advertisement (column 2, lines 45-55, i.e. gathering data regarding past performance of the advertisements and updating said information when new data is received).

9. McElfresh does not teach determining a strength of the click probability estimate based on a number of times the Internet advertisement has been previously presented and increasing the strength of the click probability estimate based on the presentation of the Internet advertisement.

10. Merriman discloses taking into account the number of times an advertisement has been seen when using targeted advertising (paragraph 0022).

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine a strength of the click probability estimate based on a number of times the Internet advertisement has been previously presented and increase the strength of the click probability estimate based on the presentation of the Internet advertisement, since Merriman states in paragraph 0022 that taking into account the number of times an advertisement has been presented helps accrue information about which users have expressed interest in which advertisements thereby making the targeted advertising more accurate.

12. Regarding claim 32, McElfresh teaches adjusting the customer profile based on types of advertisements previously responded to by the customer (column 6, lines 27-48, column 7, lines 33-60, column 8, lines 28-54).

13. Regarding claim 33, McElfresh teaches adjusting the customer profile based on Internet sites visited by the customer (column 6, lines 27-48, column 7, lines 33-60, column 8, lines 28-54).

14. Regarding claim 34, Merriman teaches wherein the strength of the click probability estimate represents an uncertainty of the click probability estimate (paragraph 0022).

15. With regards to claim 35, Merriman teaches increasing the strength of the click probability estimate by reducing the uncertainty of the click probability estimate (paragraph 0022).

16. Regarding claim 36, McElfresh teaches wherein the responses is a click selecting the Internet advertisement (column 3, line 65 to column 4, line 16, i.e. gathering performance information regarding the advertisements performance includes if the user clicked on the ad).

17. Regarding claim 37, McElfresh teaches wherein the response is a request for more information (column 3, line 65 to column 4, line 16, i.e. gathering performance information regarding the advertisements performance includes if the user requested more information).

18. Regarding claim 38, McElfresh teaches wherein the response is a purchase of an item (column 3, line 65 to column 4, line 16, i.e. gathering performance information regarding the advertisements performance includes if the user made a purchase).

### ***Conclusion***

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian LaForgia whose telephone number is (571)272-3792. The examiner can normally be reached on Monday thru Thursday 7-5.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christian LaForgia/  
Primary Examiner, Art Unit 2139

clf